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No. 82-428

IN THE

Supreme Court of the United States

October Term, 1982

ELIZABETH CIAFFONI COWDEN, Trustee of the Estate of PAUL CIAFFONI,

Petitioner

v.

CONCETTA CIAFFONI, ROBERT J. CIAFFONI,

Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

In their Brief in Opposition, Respondents argue that: (1) the Petition For Certiorari was not timely filed; (2) Petitioner failed to present a substantial federal question; and (3) Petitioner failed to preserve the right to raise any federal constitutional issue in this Court. Rather than address the substantive merits of the questions presented to this Court, Respondents have disingenuously attempted to becloud the issues and divert this Court's attention from the substantial due process and equal protection claims advanced in the certiorari petition.

It is respectfully submitted that the postures taken by Respondents are erroneous, not only by their total disregard for the true procedural history of this case and this Court's rules, but also by their utter inability to appreciate the soundness of Petitioner's clearly articulated constitutional arguments. For all of the reasons set forth, as well as those set forth in the Petition itself, Petitioner submits that the requested Writ should issue.

1. In urging denial of the instant Petition, Respondents deliberately seek to confuse the facts that (a) they unsuccessfully filed an application for reargument in the Pennsylvania Supreme Court which was denied on June 16, 1980, and (b) the Pennsylvania Supreme Court, as reflected in its May 20, 1982 Judgment, *sua sponte* treated Respondents' consolidated appeals from the trial court's denials of two Motions for New Trial, *Nunc Pro Tunc*, as a second application for reargument, with the fact that (c) Petitioner timely sought reargument after the Pennsylvania Supreme Court, on May 20, 1982, took the unprecedented step of reversing a two year old final judgment. The unconstitutional manner in which the Supreme Court of Pennsylvania reversed itself led to the due process and equal protection deprivations advanced in support of the certiorari petition.

Pursuant to Supreme Court Rule 20.4, Petitioner timely filed the instant Petition within ninety (90) days of the Pennsylvania Supreme Court's June 10, 1982, *per curiam* order denying Petitioner's *first* and *only* application for reargument. Respondents' contrary assertion is therefore legally untenable and particularly so as the Clerk of this Court is empowered, pursuant to Supreme Court Rule 20.3, to refuse "to receive any petition for a writ of certiorari which is jurisdictionally out of time." A review of the procedurally accurate statement of the

case (Petition at 4-12) undeniably reveals that the Clerk properly docketed the Petition as it was filed well within the statutorily prescribed time. *See* 28 U. S. C. § 2101(c); Supreme Court Rule 20.2. Thus, Respondents' own admission concerning the glaring procedural irregularities below, only highlights the necessity for this Court's review.

2. Respondents' putative substantive reasons urging that this Court deny the instant Petition demonstrate a desperate attempt to avoid this Court's review. Instead of addressing the constitutional due process and equal protection violations here raised, Respondents chose to ignore those clearly articulated bases for the invocation of this Court's certiorari jurisdiction. Respondents designed decision to relegate fundamental constitutional principles to a textual note (Brief in Opp., at 29 n. 6), coupled with their overt failure to comprehend the very basic constitutional precepts advanced in the instant Petition, only underscores the total vacuousness of their present position. Moreover, by conflating the purely state law evidentiary questions, which are not here at issue, with the federal constitutional questions actually advanced and which remain unanswered, Respondents have chosen to becloud the record and obfuscate the meritorious claims presented for review by this Court. This Court should reject such posturing as an ill-conceived effort to divert this Court's judicious attention from deciding the substantive and procedural constitutional questions at issue.

3. Finally, Respondents' contention that the federal constitutional issues here advanced were not preserved below must be soundly dismissed as depending on a palpably erroneous premise. It is evident that Petitioner

raised those issues presently before this Court when Petitioner moved for reargument in the Supreme Court of Pennsylvania—and could only and did only raise those issues after that Court took the unprecedented action complained of, which action created the constitutional error here at issue. The precise unconstitutional action advanced as a basis for granting this Writ was timely brought to the attention of the Pennsylvania Supreme Court, which Court summarily denied Petitioner's application for reargument. Petition at 2, 11. Because it is demonstrably apparent that Respondents' argument is devoid of any logical or legal merit, it must be cast aside.

In sum, by their refusal to respond, on the merits, to the instant Petition, Respondents exhibit an astounding insensitivity to Petitioner's legitimate interests and to this Court's historical exercise of its certiorari jurisdiction to prevent the encroachment by the States of federally secured rights; and, underscores the need for consideration of the advanced constitutional issues by this Court. The fair and orderly administration of justice requires nothing less.

Respectfully submitted,

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